

AGENCY POLICIES ON PREPUBLICATION REVIEW
PROVISIONS OF SECRECY AGREEMENTS

A. POLICY ON ENFORCEMENT OF SECRECY AGREEMENTS RELATED TO PREPUBLICATION REVIEW

1. Subsequent to the Supreme Court's decision in *U.S. v. Snepp*, numerous inquiries have been received concerning the Agency's policy on enforcement of its secrecy agreement. The purpose of this notice is to set forth information concerning the Agency's policy, for purposes of assisting persons subject to secrecy agreements to comply in good faith with the requirements of those agreements.

2. The purpose of the prior review requirement in the secrecy agreement is to determine whether material contemplated for public disclosure contains classified information and, if so, to give the Agency an opportunity to prevent the public disclosure of such information. Prior review for this purpose is unavailing if such material already has been disseminated publicly, since comparison of the material after Agency review and action with the material already available publicly would reveal which items of classified information, if any, had been deleted at the Agency's request. Consequently, in any case in which written material submitted to the Agency for prepublishing review already has been circulated to publishers or reviewers, or has otherwise been made available to the public, the Agency will not consider that submission of such material complies with the requirements of the secrecy agreement or cures any breach of that agreement occasioned by the prior public disclosure of such information. The Agency reserves the right to review any such material for purposes of taking necessary protective action to mitigate damage caused by disclosure of classified or classifiable information it may contain, but such review and action shall be entirely without prejudice to the legal rights of the United States Government and the Agency under the secrecy agreement.

3. 4. Persons bound by the secrecy agreement should understand that the Agency cannot determine unilaterally what action in court will be taken in the case of a breach of the agreement. The Agency's recommendations in this regard are subject to the decision of the Attorney General. The Agency Office of General Counsel will be notified in all cases when a known breach occurs. The expressed or presumed attitude of a person toward the United States Government or the Agency is not a factor in determining what recommendation may be made by the Agency to the Department of Justice.

5. Persons subject to a secrecy agreement are invited at any stage to discuss their plans for public disclosures covered by the agreement. The views of the Agency can only be given by an authorized representative specifically designated for this purpose by the Director in regulation or otherwise. No one should act in reliance on any position or views expressed by any person other than such authorized Agency representative.

B. POLICY ON MATERIAL TO BE SUBMITTED FOR PREPUBLICATION REVIEW

1. It is not possible to anticipate each and every question that may arise. It is the policy of the Agency to respond, as rapidly as possible, to specific inquiries, raised by persons subject to an Agency secrecy agreement, as to whether specific materials require submission for review. Guidelines for submission are contained in [] Further questions should be referred to the Publications Review Board. Former employees should address all questions concerning secrecy agreements to the Office of General Counsel.

2. The Agency considers the prior review requirement to be applicable whenever a person bound by the secrecy agreement actually has prepared material for public disclosure which contains any mention of intelligence data or activities or which is based on information classified pursuant to Executive Order. The Agency views it to be that person's duty to submit such material for review in accordance with the secrecy agreement. A person's obligation under the agreement remains identical whether such person prepares the material himself or causes another person, such as a ghost writer, spouse or friend, to prepare the material.

3. The provisions of the secrecy agreement requiring submission of information or materials for review are not limited to any particular category of materials or methods of disclosure. In the view of the Agency, these provisions apply to both oral and written materials. With respect to written materials, the provisions apply not only to books but to all other forms of written materials intended for public disclosure, such as (but not limited to) newspaper columns, magazine articles, letters to the editor, book reviews, pamphlets, and scholarly papers. Because alleged fictional treatment can be used as a subterfuge to convey factual information, fiction about the CIA or about intelligence activities is covered by the agreements.

4. Oral statements constitute one of the most difficult areas in application of the secrecy agreement. The agreement applies to material that the person contemplates disclosing publicly or actually has prepared for public disclosure. It does not, in the Agency's view, require the preparation of such material. Thus, a person bound by the agreement is not in breach of the agreement if that person participates extemporaneously and without prior preparation in an oral expression of information (e.g., news interview, panel discussions, extemporaneous speech) and does not submit material for review in advance. This does not, of course, exempt such person from liability for any unauthorized disclosure of classified ^{OR} information that may occur in the course of such extemporaneous oral expression. ^{classifiable}

5. The requirement under the secrecy agreement is ~~only~~ to submit materials on the ^{OR} subject matter of intelligence or the Agency and its activities or material which may be based upon information classified pursuant to Executive Order. The prepublication review requirement does not apply, therefore, to topics that are totally unrelated to intelligence matters, such as a manuscript of a cookbook, a treatise on gardening or writings on domestic political matters. Nor does the prepublication review requirement extend to discussion of foreign relations not purporting to contain or be based upon intelligence information.

^{OR} classifiable

6. Material that consists solely of personal views, opinions or judgments on matters of public concern and does not contain, or purport to contain any mention of intelligence data or activities or contain or purport to contain data which may be based upon information classified pursuant to Executive Order is not subject to the prepublication review requirement. For example, a person bound by the secrecy agreement is free, without prior review, to submit testimony to the Congress, make public speeches or publish articles on such topics as proposed legislation or foreign policy, as long as the material prepared by such person does not directly or impliedly constitute a statement of an informational nature about intelligence activities or substantive intelligence information. It should be obvious that in some circumstances the expression of what purports to be an opinion may in fact convey information subject to prior review under the secrecy agreement. For example, a former intelligence analyst's opinion that the U.S. can or cannot verify SALT compliance is an implied statement of fact about Agency activities and substantive intelligence information, and would be subject to prior review. This does not mean that such a statement necessarily would be classified and require deletion, but merely that the subject matter requires review by the Agency before publication. A discussion of the desirability of the SALT treaty based on analysis of its provisions and without discussion of intelligence information or activities would not. It should be clear that descriptions of an employee's Agency activities can be expected always to require prior review under these principles. At the other extreme, it is clear that a person subject to the secrecy agreement, who writes or speaks about areas of national policy from the perspective of an observer outside the government and without purporting to rely on classified information, intelligence information, or information on intelligence activities, does not have to submit such materials for prior review. While some "gray areas" may remain, persons subject to the secrecy agreement are expected to err on the side of voluntary prepublication review, in keeping with the spirit and intent of the agreement.

Policy Statement Insert, para. 3.

3. The authors of material submitted to the Agency are expected to cooperate with and assist the review process. In particular, they may be called upon to identify any public sources of information which, in the Agency's judgment, appears to originate from classified sources. Failure or refusal to identify such public sources may by itself result in refusal of authorization to publish the information in question.

SECRECY AGREEMENT

Approved For Release 2005/07/12 : CIA-RDP93B01194R001000030023-3

1. I, _____ (print full name), hereby agree to accept as a prior condition of my being employed by, or otherwise retained to perform services for, the Central Intelligence Agency, or for staff elements of the Office of the Director of Central Intelligence (hereinafter collectively referred to as the "Central Intelligence Agency"), the obligations contained in this agreement.

2. I understand that in the course of my employment or other service with the Central Intelligence Agency I may be given access to information which is classified in accordance with the standards set forth in Executive Order 12065 as amended or superseded, or other applicable Executive Order, and other information which, if disclosed in an unauthorized manner, would jeopardize foreign intelligence activities of the United States Government. I accept that by being granted access to such information I will be placed in a position of special confidence and trust and become obligated to protect the information from unauthorized disclosure.

3. In consideration for being employed or otherwise retained to provide services to the Central Intelligence Agency, I hereby agree that I will never disclose in any form or any manner any of the following categories of information or materials, to any person not authorized by the Central Intelligence Agency to receive them:

a. information which is classified pursuant to Executive Order and which I have obtained during the course of my employment or other service with the Central Intelligence Agency;

b. information, or materials which reveal information, classifiable pursuant to Executive Order and obtained by me in the course of my employment or other service with the Central Intelligence Agency, but which, because of operational circumstance or oversight, is not formally marked as classified in accordance with such Executive Order and which I know or have reason to know has not been publicly acknowledged by the Agency;

c. information obtained by me in the course of my employment or other service with the Central Intelligence Agency that identifies any person or organization that presently has or formerly has had a relationship with a United States foreign intelligence organization, which relationship the United States Government has taken affirmative measures to conceal.

4. I understand that the burden will be upon me to learn whether information or materials within my control are considered by the Central Intelligence Agency to fit the descriptions set forth in paragraph 3, and whom the Agency has authorized to receive it.

5. As a further condition of the special confidence and trust reposed in me by the Central Intelligence Agency, I hereby agree to submit for review by the Central Intelligence Agency all information or materials including works of fiction which contain any mention of intelligence data or activities, or contain data which may be based upon information classified pursuant to Executive Order, which I contemplate disclosing publicly or which I have actually prepared for public disclosure, either during my employment or other service with the Central Intelligence Agency or at any time thereafter, prior to discussing it with or showing it to anyone who is not authorized to have access to it. I further agree that I will not take any steps toward public disclosure until I have received written permission to do so from the Central Intelligence Agency.

6. I understand that the purpose of the review described in paragraph 5 is to give the Central Intelligence Agency an opportunity to determine whether the information or materials which I contemplate disclosing publicly contain any information which I have agreed not to disclose. I further understand that the Agency will act upon the materials I submit and make a response to me within a reasonable time. INSERT

7. I understand that all information or materials which I may acquire in the course of my employment or other service with the Central Intelligence Agency which fit the descriptions set out in paragraph 3 of this agreement are and will remain the property of the United States Government. I agree to surrender all materials reflecting such information which may have come into my possession or for which I am responsible because of my employment or other service with the Central Intelligence Agency, upon demand by an appropriate official of the Central Intelligence Agency, or upon the conclusion of my employment or other service with the Central Intelligence Agency.

8. I agree to notify the Central Intelligence Agency immediately in the event that I am called upon by judicial or congressional authorities to testify about, or provide, information which I have agreed herein not to disclose.

9. I understand that nothing contained in this agreement prohibits me from reporting intelligence activities which I consider to be unlawful or improper directly to the Intelligence Oversight Board established by the President or to any successor body which the President may establish. I recognize that there are also established procedures for bringing such matters to the attention of the Agency's Inspector General or to the Director of Central Intelligence. I further understand that any information which I may report to the Intelligence Oversight Board continues to be subject to this agreement for all other purposes and that such reporting does not constitute public disclosure of that information.

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10. I understand that any breach of this agreement by me may result in the Central Intelligence Agency taking administrative action against me, which can include temporary loss of pay or termination of my employment or other service with the Central Intelligence Agency. I also understand that if I violate the terms of this agreement, the United States Government may institute a civil proceeding to seek compensatory damages or other appropriate relief. Further, I understand that the disclosure of information which I have agreed herein not to disclose can, in some circumstances, constitute a criminal offense.

11. I understand that the United States Government may, prior to any unauthorized disclosure which is threatened by me, choose to apply to any appropriate court for an order enforcing this agreement. Nothing in this agreement constitutes a waiver on the part of the United States to institute a civil or criminal proceeding for any breach of this agreement by me. Nothing in this agreement constitutes a waiver on my part of any possible defenses I may have in connection with either civil or criminal proceedings which may be brought against me.

12. In addition to any other remedy to which the United States Government may become entitled, I hereby assign to the United States Government all rights, title, and interest in any and all royalties, remunerations, and emoluments that have resulted or will result or may result from any divulgence, publication or revelation of information by me which is carried out in breach of paragraph 5 of this agreement or which involves information prohibited from disclosure by the terms of this agreement.

13. I understand and accept that, unless I am provided a written release from this agreement or any portion of it by the Director of Central Intelligence or the Director's representative, all the conditions and obligations accepted by me in this agreement apply both during my employment or other service with the Central Intelligence Agency, and at all times thereafter.

14. I understand that the purpose of this agreement is to implement the responsibilities of the Director of Central Intelligence, particularly the responsibility to protect intelligence sources and methods, as specified in the National Security Act of 1947, as amended.

15. In any civil action which may be brought by the United States Government for breach of this agreement, I understand and agree that the law of the Commonwealth of Virginia shall govern the interpretation of this agreement.

16. Each of the numbered paragraphs and lettered subparagraphs of this agreement is severable. If a court should find any of the paragraphs or subparagraphs of this agreement to be unenforceable, I understand that all remaining provisions will continue in full force.

17. I make this agreement in good faith, and with no purpose of evasion.

Signature

Date

The execution of this agreement was witnessed by the undersigned, who accepted it on behalf of the Central Intelligence Agency as a prior condition of the employment or other service of the person whose signature appears above.

WITNESS AND ACCEPTANCE:

Signature

Printed Name

Date

Secrecy Agreement insert, end of para. 6.

I further understand that if I dispute the Agency's initial classification determinations on the basis that the information in question derives from public sources, I may be called upon to specifically identify such sources. My failure or refusal to do so may by itself result in denial of permission to publish or otherwise disclose the information in dispute.

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Item for Inclusion in PRB Agenda

FROM:

Office of General Counsel

EXTENSION

NO.

DATE

21 June 1982

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1.

Chairman, PRB

2.

BTB
CEW

3.

OGC

4.

5.

C/CRD

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15.

1. OGC recommends that the current EOD Secrecy Agreement and the Policy Statement on Prepublication Review be amended to more explicitly reflect current Agency Policy and PRB practice. The attached copies of the Secrecy Agreement and the Policy Statement contain the proposed revisions, which serve two purposes:

(1) to make clear that the Secrecy Agreement protects all classifiable information, whether or not it has been formally classified; and

(2) to expressly state the employee/author's obligation to identify public sources when he or she contests PRB classification determinations on that basis.